

VERNON J. JOHNSON, INC.

IBLA 73-210

Decided December 5, 1973

Appeal from a decision of the Oregon State Office, Bureau of Land Management, denying a petition for partial revocation of a power site classification, OR 8755 (Wash.)

Appeal dismissed. Case remanded.

Rules of Practice: Appeals: Standing to Appeal--

Withdrawals and Reservations: Power Sites--Rules of Practice:

Supervisory Authority of Secretary

Where a petition for the revocation of a power site classification of certain land is denied, pursuant to the provisions of Part 1 of a Memorandum of Understanding Between the Federal Power Commission and the Department of the Interior, on the ground that classification of the land for disposal under the Public Sale Law would be inconsistent with proper land use, the petitioner has no right of appeal to the Board of Land Appeals, from the adverse action. The petition under the Departmental regulations is a petition-application for classification, which is subject only to the exercise of supervisory authority by the Secretary of the Interior.

APPEARANCES: Vernon J. Johnson, President of Vernon J. Johnson, Inc.

OPINION BY MRS. LEWIS

Vernon J. Johnson, Inc., 1/ has appealed from a decision of the Oregon State Office, Bureau of Land Management, dated August 29,

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1/ The style of the case has been changed from United Pacific Land Company to reflect the true petitioner.

1972, denying its petition for the revocation of Power Site Classification No. 75, as to Lot 1, section 12, T. 12 N., R. 8 E., W.M., Washington, containing .70 acres.

The petition states that release of the land from the power site classification was being requested in order that the parcel could be offered for public sale.

The State Office grounds for denial of the petition are: (1) The land is not suitable for disposal and should be retained in public ownership, as it is one of a very few tracts of public land left in the area; (2) although the parcel is small, it has river frontage and is within a "green belt" area having major significance for wildlife habitat and public recreational values; (3) its transfer to private ownership would restrict public use of the area and would have a detrimental effect upon wildlife programs in the area.

We note that Part I of the Memorandum of Understanding Between The Federal Power Commission and The Department of the Interior, approved in 1966, provides, with respect to public lands classified, withdrawn, or reserved for power purpose, that all petitions for restoration or revocation of power site withdrawals shall be directed to the Bureau of Land Management, and the Bureau will determine whether the land disposal sought by the petition is consistent with proper land use. It expressly states, "Where it is not consistent, the BLM will reject the petition (in accordance with Departmental procedures) without reference to other agencies." BLM MANUAL, Part 2022, Appendix I.

Where, as in the instant case, a petition for revocation of a power site classification is rejected as being inconsistent with proper land use, as provided under the Memorandum of Understanding, the petition is, under the procedures of the Department, a petition-application for classification of land for disposal under the Public Sale Law. In such circumstance, under the regulations of this Department, 43 CFR 4.410 and 43 CFR 2450.5(d), the petitioner has no right of appeal to the Board of Land Appeals from the rejection of his petition-application for a land disposal classification. It follows that this Board lacks jurisdiction to entertain an appeal in such matters.

Accordingly, the appeal must be dismissed for lack of jurisdiction.

The regulations pertaining to the petition-application system, however, provide that an initial classification decision of the BLM for a period of 30 days shall be subject to the exercise of supervisory authority by the Secretary of the Interior. 43 CFR 2450.5.

Therefore, pursuant to the lack of jurisdiction in the Board of Land Appeals, the appeal to this Board is dismissed. The case file is remanded to the Oregon State Office, Bureau of Land Management, for action prescribed in 43 CFR Part 2450.

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Anne Poindexter Lewis, Member

We concur:

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Joan B. Thompson, Member

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Douglas E. Henriques, Member

